Supreme Court, U.S.
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In The

Supreme Court of the United States

DOROTHY SCHOLWIN,

Petitioner,

v.

THE DEPARTMENT OF
CHILDREN AND FAMILIES,

Respondent.

On Petition For A Writ Of Certiorari To The Commonwealth Of Massachusetts Appeals Court

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Should a highly respected grandmother and highly respected family members, who wish to care and protect a blood relative child, that the Grandmother raised since birth, to almost thirteen years old, be deprived of and **completely isolated** from a once, happy healthy and productive Grandchild without any validated reason(s)?

2. Did the fact that the Massachusetts legal court judges are **all** politically appointed, enable the Massachusetts Department of Social Services, to exert **strong** influences on the Judicial System, enabling them to adversely affect my Grandson, to going from being a brilliant, productive, strong Child, to one the Department classifies as frail, with behavioral concerns?

3. What is the real reason why the Department refused to allow my Grandchild **any** court appearances, to express himself in court, or in the Judge's Chambers, when I and my Attorney, John Slattery, requested this, and the Appellate Courts were astonished to see that was not done?

4. Did actions of the Appellate Courts violate the Grandmother's and other family members' fundamental Constitutional Rights, in not ruling for *any relief whatsoever*, after about five years of suffering that continues.

QUESTIONS PRESENTED – Continued

5. Why are there shocking cases of helpless children, like my Grandson's, initiating class actions, to the United States Supreme Court, from many States, against some social services departments and questioning courts?

PARTIES TO THE PROCEEDINGS

MEMBERS OF THE DEPARTMENT OF CHILDREN AND FAMILIES RECENTLY CALLED THE DEPARTMENT OF SOCIAL SERVICES:

FORMER COMMISSIONER OF THE DEPARTMENT – LEWIS H. SPENCE.

PRESENT COMMISSIONER OF THE DEPARTMENT – ANGELO MCCLAIN.

DIRECTOR OF CHELSEA SOCIAL SERVICES – RUTH MCDERMOTT.

ATTORNEY FOR THE DEPARTMENT – LISA LOVELAND.

ASSISTANT ATTORNEY GENERAL FOR THE DEPARTMENT – DOUGLAS MARTIN.

JUDGE OF THE DISTRICT COURT, CHELSEA – JUDGE TIMOTHY GAILEY.

CAMBRIDGE, ACTING JUDGE IN CHELSEA, JUDGE SEVERLIN SINGLETON III.

ATTORNEY JOHN SLATER, ESQ.

ATTORNEY – HELEN BRYANT BRANT – COURT APPOINTED ATTORNEY FOR MY GRANDSON, APPOINTED BY JUDGE SMOOT.

GUARDIAN AD LITEM, APPOINTED BY JUDGE SMOOT, PAULA WISENEWSKI, LICSW.

PARTIES TO THE PROCEEDINGS – Continued

BARNEY KEEZELL, DIRECTOR OF FAIR HEARINGS FOR THE DEPARTMENT.

ATTORNEY FOR THE DEPARTMENT – VIRGINIA PEEL.

ASSOCIATE JUDGE MARJORY GERMAN, LOWER COURT JUDGE OF JUVENILE COURT.

JUDGE OF PROBATE COURT – JUDGE SMOOT.

APPELLATE JUDGES – GRAINGER, BROWN AND RUBIN JJ.

SECOND ATTORNEY FOR MY GRANDSON (CODE NAME KNOX) – JAMES MAHONEY.

ATTORNEY FOR KNOX'S MOTHER – ANN FERRY.

UNITED STATES MASSACHUSETTS DISTRICT JUDGE – JOSEPH TAURO.

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United States District Court of Georgia, Northern District of Georgia Atlanta Division, *Kenny A. By Linda Winn, et al., (Plaintiffs) v. Sonny Perdue, et al.* in Civil Action 1:02-cv-1686 MHS, Feb. 8, 2005.

BOOKS AND ARTICLES

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KNOX'S GRANDMOTHER PETITIONS FOR A WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue, to review the judgment below, so that Justice will, after about six years, give my Grandson, his family and especially his grandmother relief from harm, pain and suffering.

OPINIONS BELOW

The opinions of the Courts are unpublished for all Court Levels.

Plaintiff/Appellee names impounded on all Court Levels.

All petitions for relief for my Grandson and his family were denied.

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is unpublished (to the best of my knowledge) and impounded.

All rulings of the courts in this request have been judged unpublished. (See Appendices A-F.) The Massachusetts Court failed to prevent a miscarriage of Justice by claiming the child refuses his Grandmother, the child can pick his own fate, and custody of the Grandmother was not in the best interest of the child. In fact, it was and is the only best interest for my Grandson.

JURISDICTION FOR CASES FROM STATE COURTS

The courts in Massachusetts are part of the District of Columbia so the Supreme Judicial Court of the United States has jurisdiction over the Commonwealth Courts.

The date on which the highest state court decided my case was July 17, 2009.

A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on August 20, 2009 and a copy of the order denying rehearing appears at Appendix E.

A timely petition was filed with the Commonwealth of Massachusetts Supreme Judicial Court, for a F.A.R. on September 9, 2009, and denied on October 29, 2009 and appears at Appendix F.

Now this is a petition for a Writ of Certiorari in December 2009, I believe jurisdiction is under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

FOR THIS ENTIRE PETITION:

Article VI "This Constitution . . . shall be the Supreme Law of the land, and the Judges in every State shall be bound thereby."

The First Amendment "Congress shall make no law abridging . . . the right of the people to petition the Government for a redress of grievances."

Section 1 of the Fourteenth Amendment " . . . nor shall any State . . . deny to any persons . . . the equal protection of the laws."

Article V "All power resides originally in the people and officers of government . . . are at all times accountable to them."

Article VIII " . . . To prevent those whom are vested with authority from becoming oppressors . . . , the people have a right to have their public officials return to private life."

Article XI "Every subject of the Commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person or character . . . conformably to the laws."

Article XXIX " . . . it is essential to the preservation of the rights of every individual, his life, his liberty, property, and character, that there be an impartial interpretation of the law and administration of Justice."

STATEMENT OF THE CASE

Petitioner is an honorable, highly respected Grandmother who cared for her grandson (Knox is

the name given to the Grandson in law activities) from birth to 12½ years. Every year this child grew and prospered to a happy, intelligent child. When he attended day care, and grammar school, his teachers and sport coaches wrote highly of this child. Knox was on the honor roll every year. His mother came occasionally and would take him off to unknown places with people we would never associate with. When she decided to marry one of these people, and have his child out of wedlock, the parents told her she had to go on her own and she would receive no more financial help. She took the child from school, and was soon declared an unfit mother. She used the child to lie to get aid from Social Services. Social Services soon took control of the child, never informing the Grandmother or family members of their intentions for Knox, contributing to trauma in the child. The Department of Social Services claimed the child claimed abuse in the home (never substantiated), and for almost six years not allowing the respected Grandmother and other highly respected family members to even speak, know anything about him, visit and/or participate in his care. They claim he was now frail, and that a Child, once, abundantly happy and productive, no longer wants to see or live with his family. The allegations were never substantiated, and it is my belief that the Boston Department of Children and Families has permanently harmed my Grandson. He is now 15 years old, and they continue to claim that the child is frail with behavior problems. All he must want is to return to HIS family. *Troxel v. Granville*, 530 U.S. 57 (2000) and *Smith v. Organization of Foster Families for Equality and Reform*,

431 U.S. 816 (1977), underline blood family ties, and the importance to children.

Grandmother petitioned for Guardianship and was denied in lower Court. I appealed and had the petition denied 3 times in Massachusetts appeals court, and once in the United States District Court. Here, it was returned to the State Courts. No relief whatsoever to Knox, his Grandmother, and the family was ever considered. Justice demands Justice for all. The child's mother died in March 2009 and this is a substantial change of circumstances. The Courts ignored this fact. His blood family should have custody and visitations while this is worked out as indicated in M.G.L. Chapters including:

Chapter 119, Protection and Care of Children and Proceedings Against Them

Chapter 119, Section 23 Responsibility of department to provide foster care for children; grandparent visitation; Section 23 paragraph five states:

> Whenever the child is placed in family foster care, the court shall ensure that grandparents, upon their request, have access to reasonable visitation rights with the child who is the subject of the petition, and that the department establish a schedule for such visitation unless it is determined by the department that such a visit is not in the child's beat interests.

The Fourteenth Amendment ensures our rights to our Grandson. Justice Blackmun, in the *De Shaney*

Case, dissent in the case with Marshall & Blackmun JJ., mentioned here, agreeing " . . . formalistic reasoning has no place in the interpretation of the Fourteenth Amendment and precedents may be read broadly or narrowly depending how one chooses to read them", *De Shaney*, page 489 U.S. 196, 212 and 213 (1989).

PETITION FOR A WRIT OF CERTIORARI

Petitioner Dorothy Scholwin respectfully petitions for a *writ of certiorari* to review the judgments of the Massachusetts Probate Court, the Massachusetts Juvenile Court, the Massachusetts Appeals Court, and the Massachusetts Supreme Judicial Court, in apparent contravention of parts of the Constitution of the United States, and parts of the Massachusetts State Constitution, as well as policies of the Massachusetts Department of Children and Families. The rulings to the petitioner and the court orders have done *much harm* to a good honorable family, the Grandmother and especially the Child. It exposes a system of subjectiveness, painful and harmful to this child and his family. Many families, who have suffered in similar manners are joining organizations. These persons pray that the United States Supreme Court step forward and rule, to help unfortunate families, and helpless children such as my Grandson. The Massachusetts Department of Children and Families do not consistently follow their own policies and procedures. The Massachusetts State Audits mentioned in this case, in Lower Courts, verify this

as a fact. This case, as well as others, have experienced some adverse effects of their actions. Judges may be influenced by other factors, other than Justice, in making decisions about children returning to their good, blood families. While waiting for guardianship and other legal issues to be resolved, Grandmother's visitations and other family members' visitations, should be allowed.

The volume of cases filed, or being developed, in class actions for reasons such as good family considerations, is sufficient evidence of the eroding of children and good families' rights, in the United States of America, and a need for much to be done to correct this concern.

REASONS FOR GRANTING THE PETITION

The important question here is should a person or an organization, under the protection of "best interest of the child", and with the protection of the courts, take a child from a good family, and use that child in whatever manner, and for whatever objectives that the organization(s) desire, and change and direct that child's life to one that is deliberately different from any that he had, and would have, by isolating that child completely from family members, to assure the success of the organization's objectives, and not many of the child's. In doing so, preventing guardianship and visitations from the Grandmother and any other family member who poses a threat to

what the Social Services Department objectives are. Such policies violate the rights of the child, the Grandmother and the entire family's Civil Rights (42 U.S.C. § 1983). It produces great harm in such children. The United States Constitution, First, Fifth, and Fourteenth Amendments, clearly state this cannot be allowed. Also, the Declaration of Rights V, VII, XX, and XXIX claim we are protected against such harm. The Commonwealth of Massachusetts Constitution states in the Preamble that citizens, "should in safety and tranquility enjoy their natural rights, and blessings, . . . and to take measures necessary for their safety, prosperity and happiness." Article V of the Massachusetts Constitution states, "judicial or their . . . agents . . . are all times accountable to them (the people)". The Commonwealth of Massachusetts Constitution states, "No man . . . have any other title to obtain advantages in Article V."

Article XI states that every subject of the Commonwealth ought to find a certain remedy, by having recourse to the laws for all injuries or wrongs he may receive in his person, property or character. Article XIX states that the people have a right to redress of the wrongs done them and of the grievances they suffer. See Amendments, [Art. XI VIII *Definitions*]. My Grandson, Knox, his family, and I have not had *any* relief for almost six years. Something is very wrong with the Department of Children and Families and the Commonwealth Judicial System for this to happen to good people, for so long. They give the impression, to many, they are one and the same. The Department of Children and Fam-

ilies erred in Massachusetts General Law, Chapter 119 Section 23 part C, by deciding to claim the child does not want his family and Grandmother. Yet the Department never once allowed the family to participate in the care and protection of my Grandson. The Courts allowed this, even though the Appellate court stated, "the child was not here before us, so it was *not evident* what he would want." The New Jersey Legislature, in the New Jersey Supreme Court Case, No. A-124, September Term 1998, decided April 2000, Justice Garibaldi presiding, and Justices O'Hern, Coleman, Long, Verniero and Garibaldi, voted to vacate and reverse a prior judgment, in *Adoption of a Child by W.P. and M.P.*, 163 N.J. 158, 748 A.2d 515 (1999). In *De Shaney v. Winnebago* CTY.DSS, 489 U.S. 189 (1989), the Supreme Court indicated at 489 U.S. 210, causation of harm, and department responsibilities, "using the term who dealt the blows" instead of psychological, adverse effects of separation from family, for Knox. In *De Shaney*, 489 U.S. at 196, Justice Blackmun dissented quoting *Davidson v. Cannon*, 474 U.S. 344, 348 (1985) stating "inaction can be every bit as abusive of power as action, that oppression can result when a State undertakes a vital duty, than ignores it." When I indicated articles of respected researchers in *The Journal Social Work*, as evidence of the trauma children experience when taken into foster care, the Lower Court labeled this hearsay. Yet in *Adoption of a Child by W.P. and M.P.*, Judge Garibaldi writes in section IV Legislative Intent to support their positions: "Sociological literature has documented and analyzed the benefits children receive from a healthy

relationship with their grandparents. Contact with grandparents produces children who are rooted in and proud of their family and culture, emotionally secure, and highly socialized. Additionally, the interaction between grandparents and grandchildren mitigates ageism in children because older people love them, mitigates sexism because grandmother and grandfathers do essentially the same thing, and grandparents can give grandchildren "an emotional sanctuary from the everyday world". These findings are consistent with other experts on child development, who generally agree that it is important for children to maintain ongoing meaningful relationships. Here a Judge references sociological publications in his work. In the same case above, see how other courts and state legislatures, other than the Massachusetts ones, embrace a larger concept of family, meaning extended family relationships. (See *Moore v. City of East Cleveland*, 431 U.S. 504, 505, 97 S. Ct. at 1938-1939, 52 L.Ed.2d at 541.) Although the Grandmother's objective was and is Guardianship, visitations were requested, until guardianship was granted.

> [G]randparent visitation involves much lesser risk of threat to the physical or psychological well being of the child or to the development of a healthy and natural relationship. He continues: "It is a biological fact that grandparents are bound to their grandchildren by the unbreakable links of heredity. It is a common human experience that the concern and interest grandparents take in the welfare of their grandchildren far exceeds

> anything explicable in purely biological terms. A very special relationship often rises and continues between grandparents and grandchildren. The tensions and conflicts which commonly mar relationships between parents and children are often absent between those very same parents and their grandchildren. Visits with a grandparent are often a precious part of a child's experience and there are benefits, which develops upon the grandchild from the relationship with his grandparents, which he cannot derive from any other relationship."

"NEITHER THE LEGISLATURE NOR THIS COURT IS BLIND TO HUMAN TRUTHS WHICH GRANDPARENTS AND GRANDCHILDREN HAVE ALWAYS KNOWN"

Other States are able to do a better job with monitoring the activities. In New Jersey, about 107,000 children live in grandparents' households. All 50 States have passed some laws that allow grandparents visitations. The New Jersey State Legislature Assembly Task Force on Grandparenting, *Report of Findings and Recommendations I* (Jan. 2000), agrees with the standards (requirements), to determine when grandparents and some family members may have visitations with their relatives. *Zack v. Fiebert*, 235 N.J. Super. 424 (App. Div. 1989), in which New Jersey provided standards for determining visitations to consider eight factors, on various relationships with family and their duration and quality. The statute is

limited to blood relatives, mostly grandparents and siblings. As mentioned already in *Adoption of a Child by W.P. and M.P.*, relief was allowed the grandparents by remanding the matter to the trial court to determine, after hearing, whether visitation would be in the best interest of the child. Most of the cases that reached the Department of Children and Families are problematic families. The family Knox comes from included Dean of a university nursing school, dentist, teachers, medical social worker who studied at Massachusetts General Institute of Health Professionals, F.B.I. agent, engineers, investment banker, attorney graduates (from the best law universities), and a law enforcement officer. All would have helped with Knox if asked. We never were allowed the opportunity, and we believe some individual, or a group of individuals, are responsible. The ad-litem told us, from *day one*, "Social Services does not like you Dorothy", and witnesses were there.

The Court likes to rely on cases that do not fully apply to Knox's situation in any way. These include matters not identical to the issues in my case. In the *Adoption of Hugo*, 428 Mass. 219, 225 (1998), there exists substantial deference which opens the door wide because there exist no set standards and there exist a lot of bias and errors in this case. This case has issues unlike Knox's situations. In *Custody of Kali*, 439 Mass. 834, 844-845 (2003), there existed an abuse of discretion, substantial change of circumstances, and gender issues, in the best interest of the

child. In *Adoption of Nancy*, 443 Mass. 512, 518 (2005), the father was unfit, used to give weight to this case, and father would not follow plans to improve himself. In *Care and Protection of Georgette*, 439 Mass., there was lots of reliable evidence that the father was unfit, and considered the maturity of the child. Knox was always an innocent, protected, child who enjoyed a privileged life. In *Custody of a Minor*, 383 Mass. 595, 601-602, parental unfitness is the main issue in this case. Knox has always loved his family, especially his Grandmother. Each night, Knox called out to his Grandmother before going to bed, "I love you, Grandmother." So the interpretation of these cases and the manner of discretionary application to Knox's Case is not appropriate. In *Freeman and Chaplin*, 388 Mass. 398, 408 n.18 (1983), this child lived in a different situation than Knox did, and one of unhappiness, unlike Knox's life of privilege, happiness and productivity. Furthermore, Knox has experienced traumatic situations which include separation from a loving family, a protective productive environment, separation from friends, his school, his home, his neighborhood, his sense of security, his sports, his future plans. He had fear, trauma, uncertainty and traumatic situations, one after the other, which he learned helplessly there is no escape from. All with strangers! All this emphasizes and significantly contributed to his becoming frail and having therapy, he never needed with us, and most likely, medications. With medication damage, the courts *cannot* determine what Knox's true wishes are, or would have been. They

claim he does not want to see his Grandmother, or Grandfather, yet he is judged too frail to be well enough to make his own decisions (why the Department claims he was never allowed in courts). We have no access to the child.

Other states are considering class action suits involving state social service departments and the legal court systems. Some of these States are:

1. *Michigan* held a hearing in federal court on behalf of 19,000 children. Their Department of Human Services did not want to provide records for sixty-seven foster children. A hearing was held August 7, 2007 with U.S. Judge Nancy Edmunds. Certain documents were ordered to be released by the State by August 31, 2007. (Appendix O, Settlement Statement).

2. In *California*, May 31, 2007, a lawsuit was filed on the Los Angeles Department of Social Services by a former foster child, because he claims he lost his family members' love and support, and went into trauma as a result. Elizabeth J. Bruce aka Elizabeth J. Alldridge – Superior Court for State of California County of Los Angeles, *Elizabeth Bruce aka Elizabeth Alldridge (Plaintiff) v. County of Los Angeles Department of Public Social Services & Does 1-20 Inclusive (Defendants.) Also Beltran v. Santa Clara County,* 514 F.3d 906 (9th Cir. 2008).

3. In May 2007, *David C. v. Huntsman* in Utah was a class action on the Utah social service which is

now, after an agreement with all parties, a national model. 93-C-206 W.D. Utah 2-25-1993 (also known as *David C. v. Leavitt* Agreement).

4. Class action August 2006, *Clark v. Willden*, *Nevada* against state Health and Human Services and other Clark County officials involved. U.S. District Court of Nevada, No. 2:06-CV-01068.

5. *Katie A. v. Bonta*, class action against the *California* Department of Health Services, Los Angeles County's Department of Children and Children Families. (*Katie A. v. California Dept. of Health and Human Services, Los Angeles County Dept. of Children & Families, No. 06-55559*), 481 F.3d 1150 (9th Cir. 2007).

6. *J.K. v. Eden*: *Arizona*, 836 F. Supp. 694 (D. Ariz. 1993), class action for Medicaid-eligible children.

7. *Pittman v. South Carolina*, No. 07-8436 (2008). *Roper v. Simmons*, 543 U.S. 551 (2005). National Center for Youth and twelve others.

8. *Clayworth v. Bonta*, 140 Fed. Appx. 677 (9th Cir. 2005). *California*: class action, health care issue organizations in a *certiorari* case in the United States Supreme Court in an Amici case with providers and beneficiaries. The Supreme Court must look in depth at my petition because there are many other class actions, with some of the same, or similar issues as my case, *in* many other states. Cases have started, been tried, some in the Supreme Court, or about to be evolving as class actions. The Supreme Court of the United States of America must set the rules/orders for the entire United States of America Department

of Social Services and Lower Courts Relief Policies on Guardianship and visitation of blood related children.

CONCLUSION

Great harm and suffering has been inflicted on loyal, law abiding citizens, especially the Grandmother's Grandson, and we have been deprived the life and the protection of our life, granted to us by the United States Constitution and the Commonwealth of Massachusetts Constitution. We beg the United States Supreme Court to correct the harms inflicted upon my Grandson, his family and the Constitutions. So many of our young soldiers have given up their lives in wars, to protect, for all United States Citizens these rights. I, the Grandmother, petition that this case be remanded, back to lower courts, and expedited, to be heard with Knox present. I petition that the Supreme Court of the United States, rule that the Grandmother be allowed guardianship, or custody and visitation during this legal process. Also, that my Grandson, his Grandmother and family members be awarded any and all appropriate relief for years of harm done to us. The petition for a writ of certiorari must be granted, past decisions reversed, and/or adjusted, to save my Grandson, and provide relief to a physically and emotionally harmed family for over five years, as this Court orders appropriate. In finding Justice for ourselves, may we give hope and comfort to others harmed by systems, Our Fathers created, to protect the people of the United

States of America. The manipulation of our Country's laws, to suit individual or group adverse agendas, must be stopped beginning now and here.

Respectively submitted,

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APPENDIX A

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

09-P-73

GUARDIANSHIP OF KNOX.[1]

MEMORANDUM AND ORDER
PURSUANT TO RULE 1:28

The maternal grandmother, Dorothy Scholwin (grandmother), appeals from a determination by a judge of the Juvenile Court denying her petition for guardianship of her grandson. The judge did not abuse her discretion in concluding that the requested guardianship was not in the grandchild's best interest, and we therefore affirm.

Background. The probate judge, in a prior proceeding, made the following uncontested findings.[2] Knox was born in August of 1994. SA at 15. Knox and his mother lived with the grandparents from 1994 until 1997, after which time the mother left Knox in the grandparents' care. Subsequently, the mother sporadically lived with the child at the grandparents' home. A decree granting temporary guardianship to the grandfather entered in October of 1999 and expired in January of 2000, but Knox remained with his grandparents until July of 2000, when the mother

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[1] A pseudonym.

[2] We rely, in part, on the probate judge's recounting of the facts due to the sparseness of the record on appeal before us.

removed the child from their home. SA at 16. Subsequently, the mother and the grandparents entered into a visitation agreement that placed Knox with the grandparents every other weekend, one week in the summer, and during April vacation. SA at 16.

The parties operated under this agreement until March of 2005, when the mother stopped complying with the order, moved to modify the agreement, and moved to terminate visitation on the basis of sexual abuse allegations. SA at 16. In response, the grandparents filed a complaint for contempt for failure to comply with the visitation agreement. A judge of the Probate Court dismissed the complaint for modification, finding that there was no credible evidence of the alleged sexual abuse presented at trial. SA at 17. The judge found the mother in contempt for failing to comply with the visitation order, but also found that the order was "unenforceable at this time" because Knox refused to visit his grandparents and it would not be in his best interests to force him to visit them.[3] SA at 17.

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[3] The grandmother, in her pro se brief, also challenges this decision declining to enforce visitation. The decision is not properly before us, as it was never appealed. While it does not appear to us that the probate judge in this case abused his discretion, we note that it is somewhat disconcerting that the judge's determination denying visitation rights to the grandparents, who essentially raised the child during his early years, rested primarily on uncorroborated allegations of sexual abuse and that more was not done to develop a clearer picture whether such abuse occurred. The judge did not speak directly with

(Continued on following page)

In December of 2007, following a finding of parental unfitness, Knox was adjudicated to be in need of care and protection, and the Department of Children and Families[4] (department) was granted permanent custody of Knox. SA at 5. The grandmother had moved to intervene during the course of this proceeding, but a judge of the Junvenile Court denied her petition. SA at 5. She filed interlocutory appeals of this denial with single justices of this court and the SJC; both appeals were denied.[5] SA at 5, 11, 12.

Subsequently, in July of 2008, the grandmother filed the petition for guardianship, the denial of which is presently before us on appeal. SA at 1-2. The judge found that Knox believed that he had been sexually abused by his maternal grandfather (who resides with the grandmother) and that he had expressed his desire to have no contact with his grandparents.[6] SA at 2. The judge did note that the

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Knox, but heard only from his attorney. Nor does it appear that a counselor or therapist was appointed to address the issue with Knox. More could, and ideally should, have been done to consider the best interests of the child in this regard.

[4] At that time, the department was named Department of Social Services.

[5] The grandmother also asks this court to reconsider the judge's decision denying her motion to intervene. This decision is not properly before us, as an appeal on the merits was never taken.

[6] The grandmother contends that Knox's expressed desire not to return to her care cannot be true and that he is maintaining this position because he has experienced "four years of

(Continued on following page)

allegations of sexual abuse were not substantiated (see note 3 *supra*) and that, though a report pursuant to G. L. c. 119, § 51A, had been filed regarding the alleged abuse, the matter was ultimately dismissed. Nevertheless, the judge concluded that "[r]egardless of the accuracy of his belief and. the truth of the underlying allegation, the child is psychologically fragile and struggles behaviorally," and placing him in a home that "he is adamantly opposed to living in will more than likely have a negative impact on him and the progress he has made in his current placement." Finally, the judge found that Knox had adjusted well to his foster home and had developed strong bonds with the foster family.

Best interests of the child. In deciding custody issues, the overriding concern of the court "must be the promotion of the best interests of the [child] and [his] general welfare." *Rolde* v. *Rolde,* 12 Mass. App. Ct. 398, 402 (1981). A determination of what is in the "'best interests of a child' is a question that presents the trial judge 'with a classic example of a discretionary decision.'" *Adoption of Hugo,* 428 Mass. 219, 225 (1998), cert. denied sub nom. *Hugo P.* v. *George P.,* 526 U.S. 1034 (1999). A trial judge may identify and weigh any factors that she believes to be pertinent to the interests involved in a particular dispute. See *Custody of Kali,* 439 Mass. 834, 844-845 (2003); *R.H.* v. *B.F.,* 39 Mass. App. Ct. 29, 39-40 (1995).

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trauma" and "gave up under trauma." Appellant's Br. 22, 25, 31. This argument is not supported by the record; she submitted no admissible evidence at the hearing to support this argument.

Though the preference of a child is treated with caution in disputes involving custody matters, *Hale* v. *Hale*, 12 Mass. App. Ct. 812, 820 (1981), "[a] judge should consider the wishes of the [child] in making custodial determinations, and those wishes 'are entitled to weight in custody proceedings.'" *Adoption of Nancy*, 443 Mass. 512, 518 (2005), quoting from *Care & Protection of Georgette*, 439 Mass. 28, 36 (2003). Moreover, a judge may give "great weight" to the "preferences of children of sufficient maturity" in such disputes. *Custody of a Minor*, 383 Mass. 595, 601-602 (1981) ("great weight" was properly given to the wishes of a fifteen year old child who did not wish to return to the custody of his mother, where there existed a "deep and seemingly irremediable psychological rift between himself and his natural mother"). See also *Freeman* v. *Chaplic*, 388 Mass. 398, 408 n.18 (1983) (noting that it is unlikely that the mother will gain custody of the child in the future, "as [t]he child is now thirteen years old, and her own wishes, rather than those of her mother, will be given increasing weight").

The Legislature has also recognized that considerable weight should be given to the wishes of older children with respect to their custodial arrangements. In the specific context of a guardianship determination, when a child is over the age of fourteen, he may nominate a guardian, who will then be appointed by the court if the court approves of the nominee. See

G. L. c. 201, § 2.[7] Similarly, when a child is above the age of twelve, his or her consent is required before the child may be adopted. See G. L. c. 210, § 2.

Knox was fourteen years old at the time of the guardianship hearing. He, therefore, had the right to nominate or consent to the nomination of his grandmother as guardian. Instead, Knox expressed, albeit through his counsel, that he did not wish to return to his grandparents and that he wished to remain with his foster family, with whom he has now been living for almost two years. Tr. 36. The judge below properly accorded "great weight" to Knox's wishes. The judge found that Knox believes that he was abused by his maternal grandfather (who still resides with the grandmother). Whether or not the alleged sexual abuse actually occurred is peripheral to the determination of what is in Knox's best interests. Clearly, the judge did not abuse her discretion in deciding that to return Knox, against his will, to a home where he believes he was once abused would not be in his best interests and could cause further psychological harm. There was no abuse of discretion in the denial of the petition for guardianship.[8]

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[7] This section of the statute was amended by St. 2008, c. 176, § 107, and the amended version was subsequently repealed by St. 2008, c. 521, § 21. See St. 2008, c. 521, § 44. The present section, as well as the amended and repealed version, both contain the referenced language and therefore do not effect [sic] our result.

[8] The grandmother makes numerous arguments in her pro se brief. These arguments are unsupported by appropriate appellate argument and applicable legal authorities, see Mass.R.A.P. 16(a)(4), as amended, 367 Mass. 921 (1975). There is no merit to

(Continued on following page)

We note, however, that what is in the best interests of a child can change with time. A change in circumstances that has occurred since the last hearing in which the child's views were presented may well serve as a basis for a new petition for visitation or guardianship. See *Donnelly* v. *Donnelly,* 4 Mass. App. Ct. 162, 164 (1976) ("Orders for the care and custody of children are considered interlocutory in nature, subject to revision based upon changing circumstances and directed to the best interests of the children"). We note that the child was not a party to this appeal, so this court did not have an opportunity to hear from him.

Decree affirmed.

By the Court (Grainger, Brown, & Rubin, JJ.),

/s/ Ashley Ahern
Clerk

Entered: July 17, 2009.

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the grandmother's claim that the judge erroneously declined to admit certain evidentiary materials, Appellant's Br. 9, 11-16, including newspaper articles and reports about the department, as these materials were not relevant to Knox's case and constituted hearsay. Tr. 9-13, 26-29. The grandmother's contention that her due process rights were violated because the department did not make every effort to keep the child with his extended family also must fail, Appellant's Br. 20-24, as this argument ignores the overriding obligation of the department, which is to protect the welfare of vulnerable children.

APPENDIX B

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss. **JUVENILE COURT DEPARTMENT BOSTON DIVISION DOCKET NO.: GU08B0050**

IN RE:
CARE AND PROTECTION OF A.S.

MEMORANDUM OF DECISION

This matter is before the court on a petition for guardianship of a minor child filed by the maternal grandmother of that child. The child, adjudicated to be in need of care and protection following a finding of parental unfitness, is currently living with a foster family and has expressed his desire not to be removed and, in particular, not to live with his maternal grandparents. Having considered the facts of this case, I find that it is not in the best interests of this child to be placed in the guardianship of his maternal grandmother. Accordingly, the petition for guardianship is denied.

Procedural History

On December 11, 2007, [Name Omitted] ("A.S.") the subject of a care and protection petition, was adjudicated to be in need of care and protection. His

parents, Kristina Scholwin ("the mother") and Kenneth Green ("the father") were found to be unfit and A.S. was ordered to the permanent custody of the Department of Children and Families. Thereafter, on July 15, 2008, A.S.'s maternal grandmother, Dorothy Scholwin, ("maternal grandmother") filed in this Court the instant petition for guardianship of A.S.

Discussion

General laws chapter 201 section 1 provides that the Juvenile Court may appoint on behalf of a minor child a temporary or permanent legal guardian of a child who is the subject of a petition for care and protection during the pendency of the care and protection proceeding. G.L. c. 201 s. 1. Similarly, general laws chapter 119 section 26 authorizes the Juvenile Court, upon an adjudication that a child is in need of care and protection, as one available disposition, to transfer temporary or permanent legal custody to "any person . . . who, after study by a probation officer or other person or agency designated by the court, is found by the court to be qualified to give care to the child." In either case, such an order of custody must be made in the best interests of the child. *See Id.*

Though the law permits any person to petition for appointment as guardian, a child over the age of fourteen child may nominate a guardian of his or her choice. Though not controlling, the court "should

consider the wishes of [children] in making custodial determinations, and those wishes are entitled to weight in custody proceedings." *Adoption of Nancy*, 443 Mass. 512, 18 (2005) (internal quotations omitted); *Care and Protection of Georgette*, 439 Mass. 28, 36 (2003).

In considering whether allowing a guardianship petition is in the best interests of a minor child, the court should consider such things as, the proposed guardian's relationship with the child and, if accommodating the guardianship petition requires removing the child from a different caretaker, whether such removal would adversely affect the child.

In the present case, the child believes that he was sexually abused by his maternal grandfather (who resides with the maternal grandmother) and has emphatically expressed to the department that he does not ever wish to have contact with either of his maternal grandparents. Concerning the allegation of sexual abuse, a report was filed to that effect against the maternal grandfather pursuant to general laws chapter 119 section 51A. Originally supported, the matter was ultimately dismissed and the maternal grandmother continues to argue that the mother contrived the allegations and that she is ready and capable to care for the child. Nevertheless, the child continues to believe that the abuse occurred and that it occurred at the hands of his maternal grandparents. Regardless of the accuracy of his belief and the truth of the underlying allegation, the child is psychologically fragile and struggles behaviorally.

Removing him from his current placement and placing him in a home that he is adamantly opposed to living in will more than likely have a negative impact on him and the progress he has made in his current placement. Indeed, the child is currently well adjusted in his foster home and has developed strong bonds with his foster family.

Though the maternal grandmother has previously been granted guardianship of the child in 1999, and claims to have had substantial contact with him from birth until 2005, since 2005 the grandparents have had little contact with him. Ultimately, considering the totality of the facts, including the psychological harm that would likely accompany allowing the petition and the expressed preference of the child, the Court finds that allowing the petition would not serve the best interests of the child at this time.

For the reasons stated above, the petition for guardianship is denied.

Dated: 1-12-09 /s/ Marjory A. German
Marjory A. German
Associate Justice

APPENDIX C

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DOROTHY J. SCHOLWIN, A.S. (Her Minor Grandson) Currently Held by the Massachusetts Department of Social Services, Plaintiff, v. LEWIS H. SPENCE, (Former) Commissioner, Department of Social Services, ANGELO MCCLAIN, (Current) Commissioner, Department of Social Services, TIMOTHY GAILEY, First Justice, Chelsea District Court, SEVERLIN SINGLETON, III, Justice, Chelsea District Court, RUTH MCDERMOTT, Director of Social Services Chelsea Division, Department of Social Services, Defendants.	*	Civil Action No. 07-11937-JLT

ORDER

April 23, 2008

TAURO, J.

For the reasons in the accompanying Memorandum, this court hereby orders that:

1. Defendants' *Motion to Dismiss* [#15] is ALLOWED as follows:

   a. Plaintiff's Section 1983 claims are DISMISSED with prejudice; and

   b. Plaintiff's state law claims are DISMISSED without prejudice.

2. Plaintiff's *Motion for Summary Judgment* [#11] is DENIED as moot.

3. This case is CLOSED.

IT IS SO ORDERED.

/s/ Joseph L. Tauro
United States District Judge

APPENDIX D

THE COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT
SUFFOLK DIVISION DOCKET NO. 00W 1746

KRISTINA GREEN, f/k/a KRISTINA WALTERS f/k/a KRISTINA SCHOLWIN, Plaintiff on Complaint for Modification/Defendant on Complaint for Contempt

v.

ARNIM SCHOLWIN and DOROTHY SCHOLWIN Defendant on Complaint for Modification/ Plaintiff on Complaint for Contempt

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MEMORANDUM OF DECISION AND JUDGMENTS
on Complaint for Modification, filed on or about March 28, 2005, and on Complaint for Contempt, filed on or about April 7, 2005

FINDINGS

1. On August 5, 1999, Arnim Scholwin ("grandfather") filed a Petition for Guardianship (Docket No. 99 P. 1861) of his grandson, A.S. ("child") who was born on [Date Of Birth Omitted].

2. When the guardianship petition was filed, the child had lived with the grandfather and his wife, Dorothy Scholwin ("grandmother") for most of his life. The child's mother, Kristina Green, f/k/a

Kristina Walters, f/k/a Kristina Scholwin ("mother") and the child lived with the grandparents from 1994 to 1997. The mother then left the child in the grandparents' care in May 1997. The mother then sporadically lived with the child at the grandparents' home. She also lived elsewhere, at times, and was incapable of caring for the child. At one point she traveled with a man and the child to Seattle, Washington. From there, she called the grandparents and the grandfather flew to Washington, at the mother's request, to retrieve the child.

3. The grandfather filed his petition for guardianship in 1999 so that he could enroll the child in school and put him on his HMO health plan.

4. A temporary guardianship was entered on October 18, 1999 and expired on January 17, 2000. The child, however, continued to live with the grandparents.

5. On July 11, 2000, the child's mother filed a Motion to Dismiss the Guardianship Petition, after being denied retrieval of the child from the grandparents' home, and was given a hearing date of August 9, 2000. The Temporary Guardianship having expired, the mother retrieved the child with the assistance of the Revere police on July 11, 2000.

6. Thereafter, the parties reached a resolution and on July 24, 2000, at the grandfather's request, his Petition for Guardianship was dismissed. That same day, the grandparents filed a Complaint for Grandparent Visitation along with an Agreement on a visitation schedule. The

Agreement was incorporated in a Judgment by the Court (Stahlin, J.). The Agreement permitted the grandparents visitation every other weekend, one week in the summer and April vacation.

7. On or about March 28, 2005, the mother filed a Complaint for Modification, asking that the grandparents' visitation order be terminated on the basis of sexual abuse allegations.

8. On or about April 6, 2005, the mother's new husband, Kenneth W. Green, filed a Petition for Adoption of A.S., which was denied (Stahlin, J.). At the time of the petition, the mother and Mr. Green had active restraining orders against each other. Mr. Green had a nine page record of drugs and violence; some of these cases were still open.

9. On or about April 7, 2005, the grandparents filed a Complaint for Contempt, alleging that the mother was denying them visitation.

10. On June 9, 2005, the Court (Smoot, J.) assigned the child counsel, Attorney Helen B. Bryant, and appointed a Guardian Ad Litem, Paula Wisenewski, to evaluate and report on the issue of custody and visitation.

11. The GAL Report was completed September 1, 2005.

12. A trial on the mother's Complaint for Modification and the grandparents' Complaint for Contempt was held on December 18, 2006. The mother represented herself, Attorney Bryant represented the child, and Attorney John Slattery represented the grandparents.

13. There was no credible evidence presented at trial supporting the allegations of sexual abuse.

14. The mother failed to establish that a substantial and material change of circumstances has occurred which would warrant a termination of the grandparents' visitation rights.

15. The mother has not complied with the visitation order.

16. Having said that, it is not in the child's best interests to force him to visit the grandparents at this time. The child is 13 years old and, through his attorney, has expressed his desire not to visit.

JUDGMENTS
on Complaint for Modification filed on or about March 28, 2005 and on Complaint for Contempt filed on or about April 7, 2005

As there was no credible evidence presented at trial supporting the allegations of sexual abuse, the mother failed to establish that a substantial and material change of circumstances has occurred that would warrant a termination of the grandparents' visitation rights. Accordingly, the mother's Complaint for Modification is DISMISSED.

As there was sufficient evidence presented at trial to establish the fact that the mother has not complied with the grandparents' visitation order entered by agreement of the parties on July 24, 2000 (Stahlin, J.), the Court adjudges the mother in Contempt.

Notwithstanding these findings, the visitation order is unenforceable at this time as the child refuses to visit.

Finally, while the Guardian Ad Litem report of Paula Wisenewski was not introduced into evidence at the time of trial and is not relied on in rendering judgment on the two pending matters, it raises serious concerns about the child's well being and shall be forwarded to the Department of Social Services by the Probation Department of this Court along with a copy of this decision,

March 22, 2007 /s/ John M. Smoot

John M. Smoot
Judge of the Probate and Family Court

APPENDIX E

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT CLERK'S OFFICE
John Adams Courthouse
One Pemberton Square, Suite 1200
BOSTON, MASSACHUSETTS 02108-1705
(617) 725-8106

August 20, 2009

Dorothy Scholwin
156 Broadsound Avenue
Revere, MA 02151

RE: No. 2009-P-0073
Lower Ct. No.: GU 08B0050

DEPARTMENT OF CHILDREN AND FAMILIES & another
vs.
DOROTHY SCHOLWIN

NOTICE OF DOCKET ENTRY

Please take note that on August 19, 2009, the following entry was made on the docket of the above-referenced case:

ORDER: Denial of petition for rehearing. (GG-B-RU, JJ.) *Notice/Image.

Very truly yours,

The Clerk's Office

Dated: August 20, 2009

To: Virginia A. Peel, Esquire
Douglas S. Maitland, A.A.G.
Dorothy Scholwin

APPENDIX F

Supreme Judicial Court for
the Commonwealth of Massachusetts
John Adams Courthouse
One Pemberton Square, Suite 1400,
Boston, Massachusetts 02108-1724
Telephone 617-557-1020, Fax 617-557-1145

Dorothy Scholwin
156 Broadsound Avenue
Revere, MA 02151

RE: Docket No. FAR-18203
GUARDIANSHIP OF A.S.

Suffolk Cty Juvenile Court No. GU 08B0050
A.C. No. 2009-P-0073

NOTICE OF DENIAL OF F.A.R. APPLICATION

Please take note that on 10/29/09, the above-captioned Application for Further Appellate Review was denied.

Susan Mellen, Clerk

Dated: October 29, 2009

To: Douglas S. Martland, A.A.G.
Dorothy Scholwin

APPENDIX G

SEPTEMBER 08, 2009

COPY Of THE GOVENOR'S [sic] FOSTER CHILD'S BILL OF RIGHTS

CONTACT – ALISON GOODWIN
1-617-2252

DOWNLOADED FROM THE COMPUTER
9-12-2009

PREAMBLE . . . These rights are intended to guide the Department . . .

Every Foster Child

Shall be treated with respect . . .

Shall have family and relatives explored first as potential placement providers.

Shall have reasonable access to caseworkers . . .

Shall participate in the development and review of service plan that affect permanence, safety, stability, or well being . . .

Shall be included in . . . Review meetings if 18 years or older . . .

. . . shall meet the foster family . . . or staff before placement . . .

. . . must live in an [sic] safe and nurturing environment . . .

Shall have involvement with family members . . .

Shall receive support in maintaining contact with . . . relatives . . .

. . . may choose not to participate in foster family activities . . .

May have access to personal documents . . .

Must have access to attorneys (**my note** . . . not under DSS influence)

Must have access to personal possessions . . . education etc.

Shall be informed of clothing, holiday, birthday . . . payments to foster parents

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APPENDIX H

WESTLAW COPY COMPUTER DOWNLOAD

110 MA. ADC 1.01

110 CMR 1.01 DEPARTMENT OF SOCIAL SERVICES

CHAPTER 1:00: PRINCIPLES AND RESPONSIBILITIES OF THE DEPARTMENT OF CHILDREN AND FAMILIES

CURRENT THROUGH MARCH 6, 2009, REGISTER # 1125

1:O1 STATEMENT OF PHILOSOPHY EXCERPTS:

> The policy of the Commonwealth of Massachusetts and therefore of the Department of Children and Families . . . is to strengthen and encourage family life . . . every reasonable effort to encourage and assist families to to use ALL AVAILABLE RESOURCES TO MAINTAIN THE FAMILY UNIT . . . to protect children and yet SIMULATANEOUSLY [sic] RESPECT THE RIGHTS OF FAMILIES. . . . The effort to balance these two obligations, ABOVE ALL OTHERS, shall govern the Department's activities.

110Ma ADC 1.01

WESTLAW COMPUTER DOWNLOAD

110 MA ADC 1: 0 2

110 CMR 1: 0 2

CODE OF MASSACHUSETTS REGULATIONS

TITLE 110 DEPARTMENT OF SOCIAL SERVICES

CHAPTER 1:00 PRINCIPLES AND RESPONSIBILITIES OF THE DEPARTMENT OF CHILDREN AND FAMILIES

CURRENT THROUGH MARCH 6, 2009, REGISTER # 1125

1:02: PRINCIPLES OF SERVICE

> In delivering services to children and families the Department shall: (2.) recognize that, consistent with the need to ensure the safety of children, THE FAMILY, is the BEST SOURCE OF CHILD REARING, AND SO Require intervention ONLY when it is CLEARLY, needed. . . . THE DEPARTMENT RECOGNIZES THAT IT OPERATES NOT IN ***ISOLATION BUT IN PARTNERSHIP WITH FAMILIES***.

Mass. Regs. Code tit. 110 § 1:02; 110 MA ADC 1:02

THURSDAY MAY 7, 2009

DSS POLICY DOWNLOAD FROM COMPUTER 5-8-2009

DSS POLICY EXCERPTS

DSS POLICY # 90-004(R) EFFECTIVE 09/01/1989; REVISED 02/10/1998

> PLACEMENT POLICY, "the Department will make reasonable efforts to prevent or

eliminate the need for placement" . . . AND MAKE IT POSSIBLE TO RETURN THE CHILD HOME . . . it is the responsibility of the *AREA DIRECTOR* (OR DESIGNEE) TO IDENTIFY SERVICE NEEDS . . . AND PROVIDE ASSISTANCE AS NEEDED . . . SUCH RESOURCES . . . RELATIVES, EXTENDED FAMILIES. . . . THE DECISION REGARDING THE NEED FOR PLACEMENT IS MADE . . . IN CONJUNCTION WITH THE *AREA DIRECTOR* . . . From the time a child is placed, A PLAN, SHALL BE DEVELOPED to RETURN THE CHILD HOME. THE DEPARTMENT SHALL *ALWAYS GIVE FIRST CONSIDERATION TO PLACEMENT WITH A RELATIVE OR MEMBER OF THE CHILD'S EXTENDED FAMILY. THE PLACEMENT SHOULD BE IN THE CLOSEST POSSIBLE PROXIMITY TO THE CHILD'S FAMILY.; OPPORTUNITY FOR VISITS BETWEEN THE CHILD AND FAMILY; PLACEMENTS BASED UPON THE CHILD'S RACIAL, ETHNIC AND CULTURAL BACKGROUND AND THE CAPACITY OF FOSTER PEOPLE TO MEET THOSE NEEDS!*

APPENDIX I

CONSTITUTION OF THE COMMONWEALTH OF MASSACHUSETTS.

[SEAL]

PREAMBLE.

The end of the institution, maintenance, and administration of government, is to secure the existence of the body politic, to protect it, and to furnish the individuals who compose it with the power of enjoying in safety and tranquillity [sic] their natural rights, and the blessings of life: and whenever these great objects are not obtained, the people have a right to alter the government, and to take measures necessary for their safety, prosperity and happiness.

The body politic is formed by a voluntary association of individuals: it is a social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good. It is the duty of the people, therefore, in framing a constitution of government, to provide for an equitable mode of making laws, as well as for an impartial interpretation, and a faithful execution of them; that every man may, at all times, find his security in them.

We, therefore, the people of Massachusetts, acknowledging, with grateful hearts, the goodness of the great Legislator of the universe, in affording us, in the course of His providence, an opportunity,

deliberately and peaceably, without fraud, violence or surprise, of entering into an original, explicit, and solemn compact with each other; and of forming a new constitution of civil government, for ourselves and posterity; and devoutly imploring His direction in so interesting a design, do agree upon, ordain and establish the following *Declaration of Rights, and Frame of Government,* as the **Constitution of the Commonwealth of Massachusetts.**

PART THE FIRST
A Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts.

Article I. All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness. [Annulled by Amendments, Art. *CVI.*]

Article II. It is the right as well as the duty of all men in society, publicly, and at stated seasons to worship the Supreme Being, the great Creator and Preserver of the universe. And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession or sentiments; provided he doth not disturb the public peace, or obstruct others

in their religious worship. [See Amendments, Arts. *XLVI* and *XLVIII*.]

Article III. [As the happiness of a people, and the good order and preservation of civil government, essentially depend upon piety, religion and morality; and as these cannot be generally diffused through a community, but by the institution of the public worship of God, and of public instructions in piety, religion and morality: Therefore, to promote their happiness and to secure the good order and preservation of their government, the people of this commonwealth have a right to invest their legislature with power to authorize and require, and the legislature shall, from time to time, authorize and require, the several towns, parishes, precincts, and other bodies politic, or religious societies, to make suitable provision, at their own expense, for the institution of the public worship of God, and for the support and maintenance of public Protestant teachers of piety, religion and morality, in all cases where such provision shall not be made voluntarily.

And the people of this commonwealth have also a right to, and do, invest their legislature with authority to enjoin upon all the subjects an attendance upon the instructions of the public teachers aforesaid, at stated times and seasons, if there be any on whose instructions they can conscientiously and conveniently attend.

Provided, notwithstanding, that the several towns, parishes, precincts, and other bodies politic, or

religious societies, shall, at all times, have the exclusive right of electing their public teachers, and of contracting with them for their support and maintenance.

And all moneys paid by the subject to the support of public worship, and of the public teachers aforesaid, shall, if he require it, be uniformly applied to the support of the public teacher or teachers of his own religious sect or denomination, provided there be any on whose instructions he attends; otherwise it may be paid towards the support of the teacher or teachers of the parish or precinct in which the said moneys are raised.

Any every denomination of Christians, demeaning themselves peaceably, and as good subjects of the commonwealth, shall be equally under the protection of the law: and no subordination of any one sect or denomination to another shall ever be established by law.] [Art. *XI* of the Amendments substituted for this].

Article IV. The people of this commonwealth have the sole and exclusive right of governing themselves, as a free, sovereign, and independent state; and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction, and right, which is not, or may not hereafter, be by them expressly delegated to the United States of America in Congress assembled.

Article V. All power residing originally in the people, and being derived from them, the several magistrates and officers of government, vested with authority,

whether legislative, executive, or judicial, are their substitutes and agents, and are at all times accountable to them.

Article VI. No man, nor corporation, or association of men, have any other title to obtain advantages, or particular and exclusive privileges, distinct from those of the community, than what arises from the consideration of services rendered to the public; and this title being in nature neither hereditary, nor transmissible to children, or descendants, or relations by blood, the idea of a man born a magistrate, lawgiver, or judge, is absurd and unnatural.

Article VII. Government is instituted for the common good; for the protection, safety, prosperity and happiness of the people; and not for the profit, honor, or private interest of any one man, family, or class of men: Therefore the people alone have an incontestable, unalienable, and indefeasible right to institute government; and to reform, alter, or totally change the same, when their protection, safety, prosperity and happiness require it.

Article VIII. In order to prevent those, who are vested with authority, from becoming oppressors, the people have a right, at such periods and in such manner as they shall establish by their frame of government, to cause their public officers to return to private life; and to fill up vacant places by certain and regular elections and appointments.

Article IX. All elections ought to be free; and all the inhabitants of this commonwealth, having such

qualifications as they shall establish by their frame of government, have an equal right to elect officers, and to be elected, for public employments. [See Amendments, Arts. *XLV* and *XLVIII,* The Initiative, sec. 2.] [For compulsory voting, see Amendments, Art. *LXI.*] [For use of voting machines at elections, see Amendments, Art. *XXXVIII.*] [For absent voting, see Amendments, Art. *LXXVI.*]

Article X. Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty and property, according to standing laws. He is obliged, consequently, to contribute his share to the expense of this protection; to give his personal service, or an equivalent, when necessary: but no part of the property of any individual can, with justice, be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people. In fine, the people of this commonwealth are not controllable by any other laws than those to which their constitutional representative body have given their consent. And whenever the public exigencies require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor. [See Amendments, Arts. *XXXIX, XLIII, XLVII, XLVIII,* The Initiative, II, sec. 2, *XLIX, L, LI* and *XCVII.*]

Article XI. Every subject of the commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely, and without being

obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws.

Article XII. No subject shall be held to answer for any crimes or offence, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse, or furnish evidence against himself. And every subject shall have a right to produce all proofs, that may be favorable to him; to meet the witnesses against him face to face, and to be fully heard in his defence by himself, or his council at his election. And no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land.

And the legislature shall not make any law, that shall subject any person to a capital or infamous punishment, excepting for the government of the army and navy, without trial by jury. [See Amendments, Art. *XLVIII,* The Initiative, II, sec. 2.]

Article XIII. In criminal prosecutions, the verification of facts in the vicinity where they happen, is one of the greatest securities of the life, liberty, and property of the citizen.

Article XIV. Every subject has a right to be secure from all unreasonable searches, and seizures, of his person, his houses, his papers, and all his possessions. All warrants, therefore, are contrary to this

right, if the cause or foundation of them be not previously supported by oath or affirmation; and if the order in the warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons, or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest, or seizure: and no warrant ought to be issued but in cases, and with the formalities prescribed by the laws. [See Amendments, Art. *XLVIII,* The Initiative, II, sec. 2].

Article XV. In all controversies concerning property, and in all suits between two or more persons, except in cases in which it has heretofore been otherways used and practiced, the parties have a right to a trial by jury; and this method of procedure shall be held sacred, unless, in causes arising on the high seas, and such as relate to mariners' wages, the legislature shall hereafter find it necessary to alter it. [See Amendments, Art. *XLVIII,* The Initiative, II, sec. 2].

Article XVI. [The liberty of the press is essential to the security of freedom in a state: it ought not, therefore, to be restrained in this commonwealth.] [See Amendments, Art. *XLVIII,* The Initiative, II, sec. 2.] [Annulled and superseded by Amendments, Art. *LXXVII.*

Article XVII. The people have a right to keep and to bear arms for the common defence. And as, in time of peace, armies are dangerous to liberty, they ought not to be maintained without the consent of the legislature; and the military power shall always be held in

an exact subordination to the civil authority, and be governed by it.

Article XVIII. A frequent recurrence to the fundamental principles of the constitution, and a constant adherence to those of piety, justice, moderation, temperance, industry, and frugality, are absolutely necessary to preserve the advantages of liberty, and to maintain a free government. The people ought, consequently, to have a particular attention to all those principles, in the choice of their officers and representatives: and they have a right to require of their lawgivers and magistrates, an exact and constant observance of them, in the formation and execution of the laws necessary for the good administration of the commonwealth.

Article XIX. The people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good; give instructions to their representatives, and to request of the legislative body, by the way of addresses; petitions, or remonstrances, redress of the wrongs done them, and of the grievances they suffer. [See Amendments, Art. *XLVIII,* The Initiative, II, sec. 2.]

Article XX. The power of suspending the laws, or the execution of the laws, ought never to be exercised but by the legislature, or by authority derived from it, to be exercised in such particular cases only as the legislature shall expressly provide for. [See Amendments, Arts. *XLVIII,* I, *Definition* and *LXXXIX.*]

Article XXI. The freedom of deliberation, speech and debate, in either house of the legislature, is so essential to the rights of the people, that it cannot be the foundation of any accusation or prosecution, action or complaint, in any other court or place whatsoever. [See Amendments, Art. *XLVIII,* The Initiative, II, sec. 2.]

Article XXII. The legislature ought frequently to assemble for the redress of grievances, for correcting, strengthening and confirming the laws, and for making new laws, as the common good may require.

Article XXIII. No subsidy, charge, tax, impost, or duties, ought to be established, fixed, laid, or levied, under any pretext whatsoever, without the consent of the people or their representatives in the legislature.

Article XXIV. Laws made to punish for actions done before the existence of such laws, and which have not been declared crimes by preceding laws, are unjust, oppressive, and inconsistent with the fundamental principles of a free government.

* * *

APPENDIX J

[Picture Omitted In Printing]

CITY OF ONE

A MEMOIR

Francine Cournos

[LOGO] W. W. NORTON & COMPANY • NEW YORK/LONDON

* * *

Trauma. Posttraumatic stress disorder. When I am a psychiatrist, these are the labels I'll learn to describe my state of mind as a foster child. Trauma occurs when a serious threat presents itself, but action is of no avail – neither resistance nor escape is possible. The ordinary ways of coping become overwhelmed, disorganized, and fragmented. Systems of attachment and meaning are disrupted. Faith in life's order and continuity is lost and the world becomes unsafe. There is a waning sense of one's positive value as a human being. Development is arrested, or even reversed, and the traumatic response may persist indefinitely, causing profound personality changes. The affected person is obliged to reenact the traumatic event as if it were a contemporary experience, instead of remembering it as something in the past.

I found it easy to identify with the descriptions – the disorganization, the psychic numbing, the feeling of living in constant danger, the guilt about survival, the conviction that one is permanently damaged, the sense of worthlessness, the struggle to believe in a future. I have felt all this myself.

The degree of trauma caused by the loss of a parent in

* * *

APPENDIX K

SOCIAL WORK
Journal of the National Association of Social Workers

October 2002
Volume 47, Number 4
337-480

[Picture Omitted In Printing]

Lesbians' Preference in Health Care Providers

Child-Centered Social Worker and the Sexually Abused Child

Clients' View of a Successful Helping Relationship

The Child-Centered Social Worker and the Sexually Abused Child: Pathway to Healing

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Lorie Elizabeth Anderson, Elisabeth A. Weston, Howard J. Doueck, and Denise J. Krause

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The prosecution of child sexual abuse cases continues to be an area in which there is a strain between the judicial system and the social work profession; the former is predominately interested in the conviction of the accused and the later [sic] *is primarily interested in the protection of the child's emotional well-being. In an effort to assist the sexually abused child throughout the court process, the authors propose the concept of a child-centered social worker committed to minimizing the potential for system-induced trauma by assisting the sexually abused child through the judicial process and providing clinical treatment as well.*

Key words: *child abuse; clinical interventions; judicial system; trauma*

Despite recent studies suggesting that rates of child sexual abuse have decreased markedly (Jones & Finkelhor, 2001), the number of children estimated to be victims of child sexual abuse is formidable. A national estimate suggested that 3.2 children per 1,000 are victimized annually (Sedlak & Broadhurst, 1996). Although every victimized child is not reported to child protection services, the number of children reported has increased dramatically. (Bierker, 1989; Finkelhor, 1979, 1984; Patterson, 1992; Sas, Wolfe, & Gowdey, 1996; Strand, 1994), as has the number of children who could serve as witnesses in court proceedings (Haugaard & Reppucci, 1988). For example, extrapolating data from New York State to the nation, Ceci and deBruyn (1993) estimated that 100,000 children could be involved in family court or criminal justice proceedings (1993).

Social workers have played an important part in the legal process and are attuned to developmental needs of children and their concerns. Moreover, social workers are recognized as experts in the area of child sexual abuse because they work with abused children more regularly than other professional groups (Mason, 1992). Increasingly, social workers are being called on by the legal system to provide information about the nature of sexual abuse and its impact on children (Wolfe, Sas, & Wilson, 1987). In addition, social workers have become more involved in efforts to educate the child about and facilitate their ability

to participate in the courtroom processes (Doueck, Weston, Filbert, Beekhuis, & Redlich, 1997; Lipovsky, 1994).

Often, there may be two different social workers working with the same family, one providing therapy or treatment and the other – typically through the auspices of a victim witness program – helping the child and her family understand the court processes. (Because most victims of sexual abuse and their social workers are female, for the sake of consistency, this articles [sic] uses feminine pronouns. Masculine pronouns are used for alleged perpetrators). The victim-witness's social worker often has a case management function in that she is responsible for linkage among the various systems: medical, legal, protective, and therapeutic. Because the victim-witness's social worker may be called into the family situation long after the abuse has occurred and late in the legal process and because she is constrained by her role to help the child through criminal court proceedings, there can be a gap for the child between the therapeutic role of the clinical social worker and the system advocate role of the child victim social worker (see, for example, Doueck et al., 1997). Through an expansion of traditional clinical practice and an integration of a diversity of social work roles, including networker, broker, educator, and mediator, this gap can be bridged. Assuming an advanced generalist approach, which broadly recognizes that social workers intervene using more sophisticated role assumptions while attending to multiple and

complex system demands (Schatz, Jenkins, & Sheafor, 1990), we refer in this article to the social work therapist, who encompasses the expanded role of practice and the advanced generalist approach, as a "child-centered social worker" or CCSW. We review the roles of the child-centered social worker and compare the functions with those of a more traditional clinical social worker.

Literature Review

The short-term and long-term negative effects of the sexual abuse of children are well-documented (Bowers, 1990; Briere, 1992; Linberg & Distad, 1985; Meiselman, 1978; Nelson, 1991; Sgroi, 1982). In addition, the very system set up to investigate and substantiate the abuse and to identify and punish the offender can further traumatize the child (Bauer, 1983; Berliner, 1985; Berliner & Stevens, 1980; Bulkley, 1981; Conte, 1984b; DeFrancis, 1969; Finkelhor & Browne, 1985; Gagnon, 1965; King, Hunter, & Runyan, 1988; MacFarlane, 1978; Sgroi, 1982; Tedesco & Schnell, 1987). The term, "system-induced trauma" has been used to describe the notion "that traditional investigative and court processes add to the child's psychological scars" (Conte, 1984a, p. 124).

The idea that courtroom processes negatively affect the child has been recognized historically. As early as 1899, when the first juvenile court was created by the Illinois legislature, advocates were concerned about the physical setting in which the

child would be placed during judicial proceedings (Platt, 1977). Early children's advocates wanted the court to look more like a parlor or study rather than an adult criminal courtroom. It was their belief that such a physical rearrangement of the courtroom would lessen the potential trauma a child might experience in the traditional judicial setting (Platt, 1977). More than a hundred years later, many professionals are still advocating for legal changes to protect child victims from additional trauma (Bauer, 1983; Watkins, 1990; Wolfe, Sas, & Wilson, 1987).

In addition, there tends to be a general failure in understanding the broader developmental context of the child, both at the time of the court proceedings and at the time of the abuse. For example, preschoolers cannot understand "intention" and therefore may not identify the perpetrator as "bad" (Kuehnle, 1996). Taken in concert with the fact that children of this age can be easily manipulated through curiosity or fear, they are targets for recanting their accounts. Latency-aged children, while able to distinguish between "good" and "bad" behaviors, feel some level of responsibility for their abuse. Thus, they can be manipulated into worrying about the consequences to the perpetrator (Kuehnle, 1996).

For adolescents a major stressor is the prolonged legal process resulting in extended family preoccupation (Burgess & Holstrom, 1975). Considered along with the seemingly endless number of times children are asked to recount their story, they may appear numb and bitter. The traumatic results of these

situations are often manifest in behavior extremes exemplified by acting out (including sexually reactive behaviors) on one end o [sic] the continuum and withdrawal on the other; symptoms of anxiety including separation anxiety and attachment disorders; and regressive behaviors.

The worker in a traditional clinical role might expand to role sets that include not only treating, the child but also helping the child deal with the legal system in a therapeutic manner. The incorporation of additional roles might include interviewing the child, assessing her mental status, determining her developmental capacities for court, evaluating the level of family functioning in relationship to the allegations, preparing the child for the court process, and making recommendations to the court about testifying methods that would minimize the retraumatization of the child (Strand, 1994). A social worker functioning as a generalist practitioner would need to be flexible with time and willing to go far beyond the confines of an office setting, unconstrained by agency policy or procedures or by theoretical orientations

* * *

APPENDIX L

http://www.childrensrights.org/news-events/press/class-action-on-behalf-of-michigan-foste. . . 2/21/2010

CHILDREN'S RIGHTS

Class Action on Behalf of Michigan Foster Children to Move Forward

18 Apr 2007 / Posted by cr

DETROIT, MI – Late yesterday in Detroit, federal Judge Nancy G. Edmunds rejected Michigan's attempt to dismiss a class action lawsuit on behalf of 19,000 children in state foster care. The lawsuit, filed in August 2006 to reform the state's foster care system, by national watchdog group Children's Rights and Michigan-based law firm Dykema Gossett, asserts that the safety and wellbeing of children in state custody are being jeopardized by a lack of management and resources in the state's child welfare system. Settlement negotiations between Michigan and Children's Rights have broken down. Discovery in the lawsuit will proceed immediately.

"This ruling means that Michigan's children will have their long-overdue day in court," said Susan Lambiase, associate director of Children's Rights.

"It is unfortunate that Michigan tried to cast aside the lawsuit, rather than fix a system that everyone knows to be seriously broken," said Sara Bartosz, Children's Rights staff attorney and lead attorney on the case. "It is time for the state to live up to its legal obligations to foster children."

Michigan's own DHS Director Marianne Udow was recently quoted as saying, "I truly believe we are putting children in jeopardy even with the current budget."

Among the systemic problems that the class action lawsuit, known as *Dwayne B. v. Granholm*, seeks to correct:

- Poor monitoring of child safety and denial of physical and mental health services for children.
- Failure to quickly move children into permanent homes; 6,300 children in Michigan are legally free for adoption, but are growing up as permanent state wards.
- A severe shortage of licensed foster homes; approximately 40% of Michigan children in state care live in unlicensed homes.
- Failure to utilize available federal funding; Michigan loses millions of federal foster care dollars each year due to mismanagement.

MEDIA CONTACTS:

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APPENDIX M

http://blog.mlive.com/chronicle/2008/07/michigan_settles_suit_agrees_t.html 2/21/2010

Mlive.com

Muskegon News Archive

Michigan settles suit, agrees to reform foster care

By John W. Stephenson
July 04, 2008, 12:51PM

LANSING – Michigan will hire hundreds of workers to help more than 6,000 abused and neglected children who have languished in foster care find permanent homes after settling a class-action lawsuit filed by an advocacy group.

Thursday's sweeping agreement, announced days before a federal trial was to begin in Detroit, also requires that foster care and adoption workers have no more than 15 cases and child protective services workers no more than 12. Many now handle 30-plus cases, causing concerns they can't keep children safe or ensure their placement in permanent homes.

State supervisors will oversee no more than five caseworkers under the settlement, which will be submitted for approval to U.S. District Judge Nancy Edmunds.

To make caseloads more manageable, the Michigan Department of Human Services may add up to 700 staff dedicated to children's services over five years, spokesman Edward Woods III said.

Michigan's progress in complying with the agreement will be overseen by a monitor reporting to the judge.

Children's Rights, a New York-based advocacy group, in 2006 sued the state on behalf of 19,000 children in state custody.

Sara Bartosz, an attorney with Children's Rights, called the agreement a milestone "to correct the injustices that abused and neglected children in Michigan's custody have lived with for too long."

Gov. Jennifer Granholm said her administration will embrace the reforms, which she said will continue child welfare improvements made in recent years.

The changes required under the settlement will cost about $200 million over four years, or 6 percent more than what the state had planned to spend on children's services over that period. Previous settlement talks stopped when DHS said it had no money to enact reforms, yet both sides wanted to avoid a trial.

An expert witness for Children's Rights reviewed the deaths of five foster children and concluded that children are far too likely to be no safer in foster care than they were with their abusive or neglectful parents.

John Goad, former director of child protective services in Illinois, found serious shortcomings in how DHS is structured and managed. Even if those problems and others didn't exist, Goad said, not having "nearly enough" caseworkers by itself is rendering the department incapable of protecting children.

The agreement sets deadlines by which caseloads have to be reduced. Ninety-five percent of foster caseworkers must have no more than 15 cases by October 2011.

Other provisions require DHS to:

- Create a Children's Services Administration dedicated exclusively to child welfare functions, headed by someone at the rank of deputy director or higher.

- Hire 40 specialists to license about 7,000 relatives of foster children. Without licenses, relatives who provide foster care aren't eligible for some financial support and aren't subject to safety assessments.

- Immediately identify all children in need of a permanent home, prioritizing those awaiting adoption more than a year.

- Do a better job recruiting foster and adoptive families.

- Hire a medical director to oversee policies including children's use of psychotropic medications. There have been problems with children not getting medical, dental and psychological exams.

- Increase training of supervisors and caseworkers.

An independent, court-ordered study has shown a foster system riddled with failures.

Children's Rights Executive Director Marcia Robinson Lowry said the reforms will take time to implement but are achievable. Through lawsuits, the group has prompted consent degrees or court orders affecting

child welfare in several states such as New Jersey and Mississippi.

To improve the system, the state hired hundreds of more foster care workers this budget year and boosted rates paid to private agencies that care for abused, neglected or delinquent children.

APPENDIX N

Dwayne B. v. Granholm
Case: 2:06-CV-13548
U.S. District Court
Eastern District of Michigan

Date lawsuit filed: August 8, 2006

Status: On August 8, 2006 Children's Rights commenced a statewide class action suit seeking to reform the ailing child welfare system in the state of Michigan. Following comprehensive factual and expert discovery and full preparation of a July 7, 2008 trial, the parties reached a settlement agreement on July 3, 2008. The settlement agreement is set for review and approval by the District Court on October 7, 2008 when a fairness hearing is set to proceed.

Co-counsel: Ned Lelbensperger and Kevin Bolan, McDermott Will & Emery LLC.

Defendants: Jennifer Granholm, as Governor of the state of Michigan; Ismael Ahmed, as Director of the Department of Human Services (DHS); Stanley Stewart, as Chief Deputy Director of DHS and Kathryne O'Grady, as Deputy Director of DHS, Children's Services, in their official capacities.

Judge: Honorable Nancy G. Edmunds, U.S. District Court Judge

Reason for filing lawsuit: The state of Michigan and DHS operate the nation's 7th largest foster care system with approximately 19,000 children residing in the legal custody of the state. Yet, the state of

Michigan ranks in the nation's bottom twelve states in the ratio of state and local dollars to federal dollars directed to help these children. These results to children are unacceptable:

More than 6,200 children in DHS custody statewide are legally free for adoption, yet most of these children have no identified adoptive home or even the prospect of a permanent home;

DHS reports that fewer than 30% of all abused and neglected children reunified with their families return home within 12 months of removal, far short of the United States Department of Health and Human Services (HHS) norm of 76% or more. 37.6% of children in DHS custody statewide, and 52.5% of children in out-of-home care in Wayne County, have languished in foster care for over two years;

DHS now places 33% of children in DHS legal custody with unlicensed relatives for foster care, yet financial and caseworker support for these relatives is severely lacking; additionally, lack of financial support to these families precludes them from being eligible for adoption subsidies and therefore increases the likelihood that children in these placements who cannot return home will languish in foster care;

Michigan's foster care caseworker caseloads exceed Child Welfare League of America (CWLA) standards, in some cases reaching 40 children per worker or more. As a result, basic safety, educational, and health care needs of children in DHS custody are not

met, and foster parents are left without the support they need to care for children;

DHS fails to meet the health care needs of foster children. As determined by the Michigan Mental Health Commission, the state's mental health infrastructure is inadequate to meet the therapeutic needs of children, including those children in DHS foster care. In addition, DHS fails to assure basic preventative screenings for children in state custody under Medicaid; and

Because foster care maintenance rates and child placing agency rates paid to foster parents are inadequate to meet children's essential service needs and to attract an adequate number of licensed foster homes, children are frequently placed in foster homes that are not suited to meet their needs; these children are subsequently moved from foster home to foster home causing them further emotional harm.

Named Plaintiffs in the case:

The six named plaintiffs are:

- **Dwayne B.:** Dwayne, a seven-year-old at the time of filing, has been moved between 15 different foster care placements since entering the legal custody of Wayne County's Department of Human Services (DHS) in 2001 as a toddler. As a result of the emotional harm caused by these many moves and DHS's failure to provide him with necessary services, Dwayne's behavior severely

deteriorated to the point that he hit himself and others, harmed animals, set fires, and destroyed property. Dwayne has also been placed on a number of psychiatric medications and has been taken to the hospital on several occasions due to overmedication.

- **Carmela B.:** Carmela has been languishing in state custody for the last 16 of her 18 years. While in state care, she has been physically and sexually abused and moved through at least 13 different placements, a number of them dangerous and clearly inappropriate. As a result of the DHS failure to provide Carmela with appropriate treatment and case-planning services, she has been denied the opportunity to live in a permanent and loving home and has suffered severe emotional and physical harm.

- **Lisa J.:** Lisa first entered the legal custody of Berrien County DHS in December 2002 as a normal nine-year-old girl. Within her first 12 months in foster care, Lisa's emotional health spiraled perilously downward as she was moved among five different foster homes, sexually abused by a foster father, and left unsupervised to engage in inappropriate behavior with one of her older brothers. Lisa is now 15 and is not getting the services she desperately needs.

- **Julia, Simon and Courtney G.:** These special needs siblings, ages 18, 19, and 20 have been in DHS custody for five years. Victims of fetal alcoholic syndrome, physical

abuse and neglect, the siblings have serious physical, mental health and behavioral needs. Julia has an IQ of only 56, indicating mental retardation, Simon is autistic, and Courtney is developmentally delayed. Throughout their time in foster care, the siblings have been denied access to treatment and services necessary to meet their significant needs.

Brief History of the Case:

August 8, 2006: Children's Rights commences a class action suit seeking to reform the under-performing foster care system in the state of Michigan. The federal complaint alleges that the state of Michigan violates the constitutional, federal statutory and federal common law rights of children in foster care and causes harm to these children by failing to provide them with permanent homes on a timely basis, failing to furnish adequate medical, dental and mental health services, failing to provide safe and stable short term foster homes, and failing to prepare children who "age out" of the foster care system at the age of majority to live independently as adults.

August 9, 2006: Plaintiffs file their motion to certify a class comprised of all children currently residing in foster care and all children who will be removed into the foster care custody of DHS in Michigan.

February 15, 2007: The District Court grants Plaintiffs' motion for class certification, certifies a

statewide class and appoints Children's Rights as class counsel.

April 17, 2007: The District denies Defendants' motion to dismiss based on standing and Younger abstention grounds and enters a Scheduling Order. Discovery opens.

August 10, 2007: the District Court grants Plaintiffs' motion to appoint a FRE 706 expert by stipulation of the parties and appoints the Children's Research Center of Madison, WI to conduct a case record review assessing the performance of the Michigan foster care system.

August 17, 2007: the District Court, through Magistrate Judge Donald A. Scheer, grants Plaintiffs' motion to compel and orders Defendants to produce the agency files relating to the six Named Plaintiffs and to produce the files of all children who died while in Michigan foster care custody from 2004 forward.

December 14, 2007: Magistrate Judge Donald A. Scheer hears argument on Plaintiffs' motion to compel production of DHS e-mail communications and Defendants' cross motion for protective order and grants Plaintiffs' motion subject to a narrowing of the user files to be searched for relevant e-mail.

February 5, 2008: The Children's Research Center files its report, "Analysis of Case Practice and Compliance with Standards in Michigan Foster Care," as the court-appointed FRE 706 expert.

February 8-29, 2008: Plaintiffs submit expert reports prepared by (a) child welfare system management expert, Cathy Crabtree, (b) CPS management expert, John Goad, (c) social work practice expert, Monica Mahan and (d) child psychiatrist, Dr. Pamela Ludolph.

February 14, 2008: Magistrate Judge Donald A. Scheer hears argument on Defendants' motion to compel production of the lawyer guardian ad litem case files regarding the Named Plaintiffs and denies the motion based on statutory privilege in Michigan.

June 24, 2008: Judge Nancy Edmunds conducts a Final Pretrial Conference with the parties.

July 3, 2008: Parties execute settlement agreement four days before a July 7, 2008 trial setting.

July 18, 2008: Joint Motion for Preliminary Approval of settlement agreement filed by the parties.

July 28, 2008: Order granting Preliminary Approval

August 14-15, 2008: Deadline for Defendants to provide notice of the settlement to class members and to post notice in public locations

September 5, 2008: End of period for the filing of formal objections of the settlement agreement

October 7, 2008: Final fairness hearing on the settlement agreement.

APPENDIX O

Settlement Agreement, Dwayne B., et al. v. Jennifer Granholm, et al., No 2: 06-CV-13548, (U.S. District Court, E.D. Michigan, 2008, Edmunds, J. and Scheer, J.), available @ http://www.mich.gov/documents/dhs/DHS-LegalPolicy-ChildWelfareReform-Settlement_243876_7.pdf. This settlement agreement is summarized at In re Rood, 483 Mich. 73, 106 n. 48, 763 N.W. 2d 587, 605 n. 48 (2009) as follows:

We note that the DHS and Governor Jennifer Granholm entered into a settlement agreement stemming from a class action lawsuit in federal district court alleging deficiencies in Michigan child welfare practices. *Dwayne B. v. Granholm,* Case No 2:06-CV-13548 (E.D.Mich.), filed August 8, 2006. The text of the settlement is available at <http://www.michigan.gov/documents/dhs/DHSLegalPolicyChildWelfareReform-Settlement_243876_7.pdf> (accessed March 18, 2009). Notably, the settlement is guided in part by the following principle: "The ideal place for children is in their own home with their own family. When DHS cannot ensure their safety in the family home, it must place children in the most family-like and least restrictive setting required to meet their unique needs. . . ." Settlement, § II.D, p. 3. The section of the settlement pertaining to service plans requires that "[i]f the parent(s) and/or child(ren) are not available or decline to sign the plan, the service plan shall include an explanation of the steps taken to involve them and shall identify any follow-up actions to be taken to secure their participation in

services." Settlement, § VII.A, p. 20. The agreement is not directly relevant to the case before us, however; it resulted from the alleged failure of the DHS to comply with applicable laws and was entered by the federal district court on October 24, 2008, after the relevant events in this case.

APPENDIX P

State Notes [LOGO]
TOPICS OF LEGISLATIVE INTEREST
September/October 2008

How the Children's Rights Settlement Will Affect the State of Michigan

By David Fosdick, Fiscal Analyst

Introduction

In August 2006, the national nonprofit organization Children's Rights filed a class action lawsuit against the State of Michigan in the U.S. District Court for the Eastern District of Michigan. The lawsuit alleged that systemic problems in Michigan's child welfare system had harmed children placed in the State's custody. In October 2008, in an effort to avert a civil trial, the two parties finalized a settlement agreement, which the Court approved. The settlement outlines how the State must modify the structure of foster care in Michigan. This article provides a summary of the Children's Rights lawsuit and settlement and begins to explore some of the factors that will influence the implementation of the settlement agreement in years to come.

Summary of the Lawsuit

The class action lawsuit *Dwayne B v. Granholm* filed by Children's Rights alleged that foster children in Michigan were mistreated while in foster placements,

did not have access to sufficient physical and mental health services, remained in State custody for an excessive amount of time, and were forced to move frequently among multiple placements. The lawsuit attributed these outcomes to a shortage of available foster placements, high caseload-to-worker ratios, improper monitoring of child safety in placements, ineffective processes for planning for the movement of children out of foster care, and low payment rates for foster care services.

During the lawsuit process, Children's Rights contracted with several outside organizations to complete a systemic review of children's services in Michigan. A management review identified deficiencies in staffing levels and management structure for children's services administered by the Department of Human Services (DHS). An analysis of a sample of cases administered through the DHS suggested that a significant proportion of cases administered through the State did not meet Federal and State guidelines designed to ensure placement stability and safety.

In October 2008, before the scheduled trial started, the State of Michigan reached a settlement with Children's Rights. The settlement agreement identifies a number of changes that Michigan must make in the next few years in the provision of foster care services. The outside reviews conducted during the lawsuit process inspired a number of the requirements included in the settlement. The court appointed a monitor to ensure that Michigan complies with this agreement.

Summary of the Settlement Agreement

The settlement agreement reached between Children's Rights and the State of Michigan covers a wide range of issues in the child welfare system in the State. The agreement includes a number of requirements and targets that the State will be required to reach over the next few years. The summary provided below is not a comprehensive list of all the requirements the State must meet; it instead covers the major terms of the settlement that will require significant structural change in the provision of child welfare services or are likely to have a significant fiscal impact on the State.

Changes in Organizational Structure

The agreement mandates a reorganization of the structure of the DHS. The Department is required to establish a separate Children's Services Administration. The Children's Services Administration will consolidate all policy development, child welfare improvement, field operations in the largest counties, data collection, and training functions under one director. The settlement provides guidance on the job descriptions for the senior staff at the new Children's Services Administration.

Additionally, the Department is required to establish distinct offices to provide children's services in Genesee, Kent, Macomb, Oakland, and Wayne Counties. Currently, children's services are provided through the same offices that provide assistance

programs. The required changes in Department structure must be complete by March 2009.

Investigation of Allegations of Abuse or Neglect

The Department is required to replace phone lines used for the reporting of suspected abuse or neglect of children that are currently operated at the county level, with a State-centralized abuse reporting hotline by October 2010. The settlement further requires the State to establish separate units for the investigation of allegations of abuse and neglect of children in foster care custody of the Department. These units must be available statewide by April 2010.

Staff Training

The agreement requires all newly hired caseworkers working in children's services to possess, at minimum, a bachelor's degree in social work. Newly hired caseworkers will be required to complete eight weeks of training and pass a written examination before beginning casework. By 2012, all caseworkers will be required to complete at least 40 hours of training annually.

The agreement further requires all workers promoted to supervisory positions to possess a master's degree in social work. All supervisors will be required to complete a 40-hour training program and pass a written examination before assuming their new tasks. With a few exceptions, all current employees

promoted to supervisory positions within the previous 18 months must earn a master's in social work within four years.

Caseload Requirements

The agreement includes a number of targets in caseload-to-worker ratios that must be met over the next few years. These target ratios must be reached for caseworkers employed through the DHS and those employed by private agencies. Michigan is required to meet interim reductions in caseload-to-worker ratios between 2008 and 2011. Provided below is a brief summary of the final ratios that must be met by worker type by 2011.

- 95% of supervisors are required to oversee five or fewer caseworkers.
- 95% of foster care caseworkers are required to have 15 or fewer cases.
- 95% of adoption caseworkers are required to have 15 or fewer cases.
- 95% of child protection service caseworkers are required to have 17 or fewer cases.
- 95% of licensing workers are required to have 30 or fewer cases.

Reaching these targets will require aggressive hiring of additional staff. Currently, caseload ratios have been reported (with variance between type of worker and location) between 25:1 and 40:1.

Permanency Planning

The agreement includes a number of requirements related to how each case is administered by the Department. Specifically, new standards are set forth for how the DHS makes decisions about child placements and the goals that are established for each child.

The Department is required to use team decision making when making major case decisions. This process uses input from family, foster parents, the DHS, and other relevant parties when major decisions are made.

The settlement requires additional policy changes designed to expedite the movement of children from foster placements to more permanent arrangements. These changes discourage the establishment of permanency goals more than one year in the future, require concurrent planning for children (establishing a groundwork for another placement if reunification becomes unworkable), and set new standards to accelerate the transition from reunification planning to adoption.

Foster Care "Backlog" Actions

The agreement outlines a number of steps the Department must take to deal with "backlogged" children: those who have been available for adoption or in foster care for more than one year. The DHS is required to hire a planning coordinator to develop

plans to place these children. During fiscal year (FY) 2007-08 and FY 2008-09, the Department is required to hire 200.0 full-time equated employees (FTEs) for permanency planning activities. The agreement requires that 50% of the backlogged children be placed in permanent arrangements by the end of FY 2008-09, 85% be placed by the end of FY 2009-10, and 100% be placed by the end of FY 2010-11.

Services to Placed Children

The settlement agreement requires the Department to ensure that all placed children have access to all needed medical, dental, and mental health care. The Department must provide an additional $3.0 million to fund mental health services for foster children. Additionally, the DHS is required to provide additional supports for children making the transition out of foster care into adulthood and to ensure that necessary educational services are provided as well.

Foster Care and Adoption Homes

The settlement requires the Department to make changes in the number and types of placements available to foster care children. Language in the agreement requires the DHS to ensure that sufficient placements are available, take over recruitment of sufficient foster home beds, and by 2010, ensure that there are 200 treatment foster home beds (for children with higher levels of need). Additional language requires the Department take steps to ensure that

payments to parents and contracted private agencies are adequate.

Further, the settlement requires the Department to ensure that all placements (with relatives and nonrelatives) are to be in licensed homes.

Needs Assessment

Under the settlement, the Department is required to provide to the court-appointed monitor an assessment of additional needs for services and placements for foster children by 2009. The DHS must complete a second analysis of the same issues in 2011. The Department is required to allocate $4.0 million to address the needs identified in the assessment. These funds likely will be used for family preservation, mental health, and reunification services.

Quality Assurance

The Department is required to develop a statewide quality assurance system. The system will be administered by a quality assurance office in the Department's central office. The unit will provide analysis of the current caseload to ensure compliance with best practice. The unit must provide a report on foster care outcome measures every six months.

Impact of the Settlement

Full implementation of the settlement agreement will significantly alter the way that children's services are

administered, structured, financed, and measured in Michigan. The agreement reached between Children's Rights and the State of Michigan was finalized in early October and translation of the elements contained in the settlement to policy and practice will be an ongoing process. Because of the uncertainty over exactly how the agreement will be implemented, it is difficult to make confident statements about its impact on the State of Michigan. The focus of this section is to identify elements of the settlement that would represent the most drastic change from current policy and provide some basic discussion of the possible magnitude of the impact associated with these changes.

Central Office Changes

Establishment of the Children's Services Administration in the DHS will represent a fairly significant change from the current DHS administrative structure. Review of the current organizational chart suggests that many of the functions related to children's services that will be pulled into the new Children's Services Administration, such as policy development, child welfare improvement, and field operations, are scattered across several divisions within the DHS.

Additional central office changes in organizational structure that must be completed include creation and staffing of a new quality assurance unit, creation and use of a data management unit, creation and staffing of a new statewide abuse and neglect hotline,

and creation of new offices to investigate allegations of abuse and neglect of foster children. Creation of these new units likely will lead to an increase in salary and wage costs for central office staff. The extent of this increase in cost will be largely driven by the ratio of current employees who can be used to meet these requirements to the need for additional staff required to comply with the settlement.

Local Office Changes

The agreement also requires changes in the administration of Children's Services at the county level. Currently, county offices are dually responsible for the provision of assistance services and children's services. Administrators at the local level are responsible for overseeing these two distinct program types. The agreement mandates separate local offices for children's services in the five most populous counties in the State (Wayne, Oakland, Macomb, Kent, and Genesee). This likely will result in an increase in administrative expenditure, but also lead to greater focus and expertise in the administration of children's services in these counties.

Local office changes include a drastic change in the number of FTEs allocated for children's services. As previously noted, caseload-to-worker ratios have been reported as high as 25:1 and 40:1. The agreement will put these caseloads for many workers as low as 15:1. This will drive additional salary and wage costs at local offices. At this time, there is not a firm estimate

of how many additional employees will be necessary to reach the case-to-worker ratios mandated in the settlement. Each additional FTE for front line services increases expenditure by about $75,000 Gross/ $45,000 General Fund/General Purpose.

Placement Changes

Additionally, the agreement requires that all children placed in foster care be placed in licensed facilities. Currently, the Department makes great use of relative placements for children in State care. In many instances relatives are unwilling or unable to achieve licensure. Requirements in the agreement largely limiting unlicensed placements mean the Department is going to have to become more aggressive in licensing relatives interested in taking in foster children and identifying more options for children without access to a licensed relative placement.

This requirement will have an impact on the financing of foster care services. One of the requirements for Federal Title IV-E funding is that the child is placed in a licensed home. Increasing the number of licensed placements and perhaps increased licensure of relative placements would increase cases eligible for Title IV-E reimbursement. This would lead to a positive fiscal impact on local government, which would no longer have responsibility for half of the cost of the placement, and State government, which would see a reduction in its share of the cost of a placement from 50% to about 38%.

Conclusion

It is likely that the settlement agreement between the Governor and Children's Rights will drive nearly all major policy decisions related to children's services in the near future. The mandated changes in Department organization and focus on children's services outlined above likely will increase State expenditures for children's services by tens of millions of dollars over the next three to four years. During a period of consistent revenue weakness, it is likely that the impact of the Children's Rights lawsuit will consume a great deal of legislative time and attention.

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